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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/710,924	08/12/2004	Theresa F. Steiger	13213-107001	4923
26191	7590	11/14/2006		
FISH & RICHARDSON P.C. PO BOX 1022 MINNEAPOLIS, MN 55440-1022			EXAMINER	AUSTIN, AARON
			ART UNIT	PAPER NUMBER
			1775	

DATE MAILED: 11/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/710,924	STEIGER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Aaron S. Austin	1775	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 14 August 2006.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 23-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 40-44 is/are allowed.
- 6) Claim(s) 23-37 is/are rejected.
- 7) Claim(s) 38-39 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date 8/14/06.
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 23-29 and 32-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abelarde (US Patent No. 7,017,292) in view of art incorporated by reference including Malino (US Patent No. 5,799,423), and further in view of Tate (US Patent No. 5,996,116).

Abelarde teaches a countdown calendar having a theme, such as for Christmas or other holiday. The calendar includes a planar substrate formed of fabric or similar sheet material having a design portion and a date portion (column 2, lines 62-65). The substrate is marked with indicia/countdown labels in the form of various pictorial or text features in the design and date portions (column 4, lines 46-47). Number coded target locations and date locations are provided (column 3, lines 16-28). The design of the substrate may be that of a Christmas tree and may include a plurality of marker elements in the form of decorative ornaments (column 3, line 4 and Fig. 6). The marker elements may be removably secured to the target and date locations by magnets, hook and loop fasteners, non-hardening adhesive, etc. (column 2, line 5). Methods for magnetic attachment are taught through incorporation by reference (column 2, lines 8-

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11). In particular, Malino teaches embedding individual magnet devices in a magnetic piece (Fig. 4B) for removable attachment to a non-ferromagnetic body portion of a calendar. Cavities or recesses may be used as storage compartments for receiving the marker elements (column 4, lines 50-58).

Abelarde does not teach a plurality of magnetic devices aligned with the indicia. Further, the fabric article is not taught as including a front panel and a rear panel.

Tate teaches incorporation of multiple magnets at desired intervals between front and rear layers of a fabric article at locations desirable for magnetic attachment of another article (column 5, lines 19-47 and Fig. 4). Therefore, as Tate teaches a plurality of magnetic devices disposed between front and rear layers of a fabric article provides the advantage of locating magnetic material at desired locations along a fabric article, it would have been obvious to one of ordinary skill in the art at the time of the claimed invention to locate magnetic devices at the number coded target locations and date locations by placement of a plurality of magnetic devices in alignment with the locations fixated in place using front and rear panels of the fabric article taught by Abelarde. Thus the claimed invention as a whole is *prima facie* obvious over the combined teachings of the prior art.

Further, regarding claim 23, Abelarde in view of Malino discloses the claimed invention except for a plurality of magnetic devices aligned with the indicia. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the non-ferromagnetic body portion of the calendar of a plurality of magnetic devices aligned with the indicia, since it has been held that constructing a

formerly integral structure in various elements involves only routine skill in the art.

*Nerwin v. Erlichman*, 168 USPQ 177, 179.

Regarding claims 28 and 29, Abelarde does not specifically teach the storage recesses being defined by a fabric article. However, as Abelarde teaches storage recesses provide the benefit of storing the marker elements, it would have been obvious to one of ordinary skill in the art at the time of the claimed invention to include storage recesses with the fabric article taught by Abelarde.

Regarding claims 32 and 33, Abelarde teaches a magnet which includes rare earth magnets. Further, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use a rare earth magnet as the magnet of Abelarde, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious engineering choice. *In re Leshin*, 125 USPQ 416.

Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Abelarde (US Patent No. 7,017,292) in view of Tate (US Patent No. 5,996,116), and further in view of Malino (US Patent No. 5,799,423).

Abelarde teaches a countdown calendar as described above.

Abelarde does not teach a hanger member coupled to the calendar.

Malino teaches use of magnetic strips, jagged member, or other suitable hanger for hanging of a calendar (column 5, line 2 and Figs. 9 and 10). Therefore, as Malino clearly teaches use of a hanger member provides the benefit of permitting hanging of a

calendar, it would have been obvious to one of ordinary skill in the art at the time of the claimed invention to include a hanger member with the calendar taught by Abelarde. Thus the claimed invention as a whole is *prima facie* obvious over the combined teachings of the prior art.

Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Abelarde (US Patent No. 7,017,292) in view of Tate (US Patent No. 5,996,116), and further in view of Malino (US Patent No. 5,799,423) and Davis et al. (US Patent Application Publication No. 2004/0079005).

Abelarde teaches a countdown calendar as described above.

Abelarde does not teach a hanger member comprising a loop member.

Davis et al. teach a calendar/chart including loops that provide a versatile hanging configuration (paragraph [0018]). Therefore, as it is clearly taught by Davis et al. that a hanger member comprising a loop provides the advantage of a versatile hanging configuration, it would have been obvious to one of ordinary skill in the art at the time of the claimed invention to include a loop member for hanging the calendar taught by Abelarde.

***Allowable Subject Matter***

Claims 38-39 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 40-44 are allowed.

***Response to Arguments***

Applicant's arguments, see the Reply, filed August 14, 2006, with respect to the claim objections have been fully considered and are persuasive. The previous objections to claims have been withdrawn.

Applicant's arguments, see the Reply, filed August 14, 2006, with respect to claim 40 have been fully considered and are persuasive. The rejection of claims 40-43 has been withdrawn.

Applicant's arguments filed August 14, 2006 with respect to the remainder of applied prior art have been fully considered but they are not persuasive.

In particular, with respect to the Aberlarde reference, Applicant argues Aberlarde fails to teach a fabric generally in the shape of a symbol associated with a holiday. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the fabric article as a symbol, since it has been held that the configuration is a matter of choice which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration claimed was significant. *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966). Even

further, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the fabric article as a symbol, since it has been held that matters relating to ornamentation only, which have no mechanical function, cannot be relied upon to patentably distinguish the claimed invention from the prior art. *In re Seid*, 161 F.2d 229, 73 USPQ 431.

Further, with respect to the Tate reference, Applicant argues the teachings of Tate are provided as non-analogous art. In response to applicant's argument that Tate is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Tate provides teachings directly related to Applicant's claimed invention, namely for a means for attachment of magnetic articles to a fabric surface. Thus the teachings of Tate are pertinent to the particular problem Applicant looks to solve. Therefore Tate is analogous art.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron S. Austin whose telephone number is (571) 272-8935. The examiner can normally be reached on Monday-Friday: 7:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jennifer McNeil can be reached on (571) 272-1540. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ASA

  
JENNIFER MCNEIL  
SUPERVISORY PATENT EXAMINER  
10/29/06